IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6205 of 1987

with

SPECIAL CIVIL APPLICATION No 38 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LILABHAI B GAREJA

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 6205 of 1987
MR HP RAVAL for Mr PM Raval for Petitioners
MR MA BUKHARI AGP for Respondent Nos. 1 & 2.

2. Special Civil Application No. 38 of 1988
MR HP RAVAL for Mr. PM Raval Petitioners
MR MA BUKHARI AGP for Respondent No. 1 & 2
MR SR DIVETIA for respondent No.3.

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 21/07/2000

COMMON ORAL JUDGEMENT

1. What is challenged in these two petitions which are filed under Article 226 of the Constitution of India is the high-handed action of the respondent No.1 Collector, Junagadh District, Junagadh, of placing locks and also welding the shutters with the rolling of the shops which are in possession of the petitioners by virtue of the lease granted to them by the Taluka Panchayat, Porbandar.

2. As these petitions involve identical question of law and facts, I propose to dispose of them by this common judgment.

3. In order to appreciate the controversy between the parties it would be advantageous to refer to the facts stated in Special Civil Application No. 6205 of 1987.

4. From the averments made in the petition, it is manifest that Taluka Panchayat, Porbandar owns a School for girls at Porbandar near Bhavsinhji Park which is very old and existing since the days of erstwhile Porbandar State. Taluka Panchayat, Porbandar constructed shops admeasuring 11' x 12' approximately in a strip of land abutting on the road. The petitioners are not aware about the exact scheme of the sale/or lease but it was made known to them that whosoever wants to occupy the shops was required to pay Rs.25,000/- as premium or price towards the construction and the occupier will have to pay rent of Rs.200/- per month except in case of two shops which are smaller one for which the rent was fixed at Rs.125/- per month. The rent will progressively increase for a period of 15 years at the rate of Rs. 10/- per year. As per the say of the petitioners, an agreement has been entered into between the President of the Taluka Panchayat, Porbandar and the occupiers. The petitioners have paid Rs.25,000/- as premium towards the price of construction and also paid advance and the rent. The petitioners are at present not in possession of the terms and conditions agreed upon between the petitioners and the Taluka Panchayat, Porbandar as all those terms and conditions signed by them are in possession of the Taluka Panchayat. Annexure A is a copy of the terms and conditions of the agreement in respect of the shop which is occupied by one Manjulaben Kalyanji. Annexure B is a copy of the receipt of payment of deposit of Rs.500/with the Taluka Development Officer by petitioner No.1

Lilabhai Bhurabhai Gareja. Annexure C is a xerox copy of the receipt of rent paid by the petitioner No.1 on June 5, 1987 for the months of June and July 1987. All the petitioners were handed over possession of the shops by the Taluka Development Officer and the petitioners are regularly paying rent. According to them, they are lawful tenants of the Taluka Panchayat, Porbandar.

5. On November 21, 1987, the Deputy Collector came with police force and had broken open the lock of the shutters of the petitioners' shops and placed therein locks and also welded the shutters with the rolling. It is the case of the petitioners that since they are in lawful possession of the premises, the respondents have no power or authority to place locks on their shops save and except in accordance with law. It is their further say that no show cause notice has been served on them and, therefore, the aforesaid action of the Collector, Junagadh is high-handed and without any authority of law.

6. It is contended that the premises will be governed under the provisions of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act ("the Act" for short hereinafter) and since the premises belong to the Taluka Panchayat and they have not done anything contrary to the terms and conditions of the lease agreement so as to entitle the Taluka Panchayat to take possession from the petitioners, without due process of law the petitioners cannot be dispossessed from the said shops. It is also contended that the Deputy Collector could not have taken possession of the premises without following the procedure laid down under Section 202 of the Land Revenue Code ("the Code" for short hereinafter). Lastly it was contended that the action of the respondent No.1 in placing lock on the premises of the petitioners and welding the shutters with the rolling is done without affording an opportunity of hearing to the petitioners and hence the petitioners have filed the aforesaid two petitions and claimed the reliefs to issue a writ, direction or order quashing the action of the respondent No.1 Collector in placing locks and welding the shutters with the rolling of the shops which are constructed by Porbandar Taluka Panchayat and are in possession of the petitioners and also claimed relief to restrain the respondents from interferring with the ingress and egress in the shops in possession of the petitioners till and pending the hearing and final disposal of the petitions. The petitionrs have also prayed for the relief to pay compensation for illegal action on the part of the respondents.

7. Though affidavit in reply has not been filed by the respondents, both the petition are hotly contested by the respondents Nos.1 and 2 whereas in Special Civil Application No. 38 of 1988 the Taluka Development Officer has filed appearance and supported the case propounded by the petitioners.

8. I have heard Mr. Harin P. Raval, learned advocate for the petitioners in both the petitions, Mr. M.A. Bukhari, learned A.G.P. for respondent Nos.1 and 2 in both the petitions and Mr. S.R. Divetia, learned advocate for respondent No.3 in Special Civil Application No. 38 of 1988.

9. The pith and substance of the submissions advanced by the learned advocates for the petitioners centers round the high-handed action on the part of the respondent No.1 in placing locks and welding the shutters with the rolling of the shops which are in possession of the petitioners without affording any opportunity to show cause. According to him, the Taluka Panchayat has constructed the shops and since the petitioners were interested in occupying the same they filled in tenders and pursuant to their tenders they were allotted the shops on payment of premium of Rs.25,000/- and the monthly rent of Rs.200/- on a condition that there will be progressive increase of rent at Rs.10/- per year for a period of 15 years. Therefore, all the petitioners are in lawful possession of the shops. As per the knowledge of the petitioners, prior to the construction of the shops, the Taluka Development Officer had also passed a resolution. It is further contended by Mr. Raval that it was heard that the District Development Officer subsequently set aside the resolution passed by the Taluka Development Officer and pursuant to that the Collector decided to take back the possession of the shops and everything has been done behind the back of the petitioners. They were not aware whether there was any dispute between the Taluka Development Officer and the District Development Officer on one hand and the Collector on the other. Therefore, since no opportunity of hearing is afforded to the petitioners the principles of natural justice were violated and since they are lawful occupiers of the suit premises, without following due process of law they cannot be evicted from the said shops and, therefore, they approached this Court with a prayer to issue appropriate writ, order or direction quashing and setting the said action of the respondent No.1.

10. Mr. Bukhari contended that the land on which

construction was made was originally belonged to the Government of Gujarat and the Government had given the said land to the Taluka Panchayat for construction of a school. But without taking consent of the Government, the Taluka Panchayat constructed shops on the said land in violation of the conditions on which the land was granted to the Taluka Panchayat and hence the Collector decided to take the land back. Mr. Bukhari further contended that the resolution passed by the Taluka Panchayat was set aside by the District Development Officer and resultantly the action of the Taluka Development Officer of constructing shops on the land in question was bad in law and as per the resolution passed by the District Development Officer, the District Collector was empowered to take the possession of the land back and, therefore, said action on the part of the Collector was in accordance with law. Since the land was originally belonged to the Government and the shops were constructed by the Taluka Panchayat without consent of the Government, there cannot be any right to the occupiers of the shops and no notice or any hearing was required to be given to the petitioners before taking any action by the Collector. Therefore, according to Mr. Bukhari, there is no question of violation of principles of natural justice in the instant case and he maintained that the said action of the respondent No.1 is in accordance with law and hence it may not be interferred with in these petitions filed under Article 226 of the Constitution.

11. Mr. Divetia, learned advocate has supported the case put forward by the petitioners and emphasised that the Taluka Panchayat, Porbandar had passed a resolution to construct the shops and after that tenders were invited and pursuant to the tenders of the petitioners the shops were allotted to them on certain terms and conditions and on payment of premium as well as rent and till today the Taluka Panchayat is recovering the rent and hence the petitioners are not unlawful occupants but are lessee of the said shops and in these circumstances the Collector has no authority to dispossess them by placing locks and welding the shutters with the rolling of the shops.

12. I have given my anxious considered thought to the rival contentions advanced by the learned advocates for the parties. From the submissions made by them and in the facts and circumstances emerging from the record of the case it appears that the land on which the shops were constructed by the Taluka Panchayat originally belonged to the Government. It was granted by the Government in

favour of the Taluka Panchayat for construction of a school. Unfortunately the terms and conditions on which the land was granted to the Taluka Panchayat has not been produced by the Government on the record of the case. However, there is no dispute about the fact that the land was granted by the Government in favour of the Taluka Panchayat for construction of the school. The Taluka Panchayat, Porbandar decided to construct shops on the strip of the land abutting on the road and naturally petitioners cannot be expected to know whether this land was granted for the purpose of constructing a school building only. It is a matter between the Taluka Panchayat and the Government. The petitioners, therefore, must be under the impression that since the construction work has been done by the Taluka Panchayat, it must be lawful and under this impression they must have put offer by filling tenders and pursuant to that they have also paid the amount of premium which was decided at the time of granting lease and must have agreed to other conditions and accordingly they are also paying rent since then. It could be gathered from the submissions of the learned advocates for the parties that subsequently the District development Officer has set aside the resolution passed by the Taluka Development officer meaning thereby the resolution passed by the Taluka Panchayat for construction of shop on the strip of land has been cancelled by the District Panchayat and pursuant to that the Collector started the alleged high-handed action. Therefore, naturally the petitioners are unaware about what transpired between the Taluka Development Officer and the District Development Officer on one hand and the Collector on the other.

13. There is no manner of doubt that the petitioners are not trespassers. They have paid the premium to the Taluka Panchayat and are also paying rent regularly. Therefore, if at all any illegality or any breach of the terms and conditions is committed it is committed by the Taluka Panchayat, Porbandar and not by the petitioners and since the petitioners are the occupiers of the shops they are also required to be heard by affording an opportunity of hearing to them before taking any action adversely affecting them. Therefore, obviously principles of natural justice have been violated by the Collector as no notice has been served on them making them aware about the resolution passed by the District Development Officer. Since the petitioners are affected persons the Collector ought to have heard them before taking any action.

14. Now let us examine what is the meaning of natural

justice. The phrase 'natural justice' is not capable of static and precise definition. However, a duty to act fairly, i.e., in consonance with the fundamental principles of substantive justice, is generally implied, irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. The object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair-play in action. Natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions of proceedings, be given adequate notice of what is proposed so that they may be in a position, (a) to make representation on their own behalf; (b) or to appear at a hearing or inquiry (if one is held); and (c) to prepare their own case effectively and answer the case (if any) they have to meet. All actions against affected parties which involve penal or adverse consequences must be in accordance with the principles of natural justice. The rules of natural justice do not supplant law, but supplement it. If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the Court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. As is well settled, rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice, viz., (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the alter of administrative convenience or celerity. It is not permissible to interpret any statutory instrument so as to exclude natural justice, unless the language of the instrument leaves no option to the Court. Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties.

15. In light of the aforesaid principle, so far as the instant case is concerned, as observed in earlier paragraphs of this judgment, no notice came to be served to the petitioners. A copy of the resolution passed by the District Development Officer whereby he cancelled the

resolution passed by the Taluka Development Officer has not been supplied to the petitioners and under what provisions of law the Collector has initiated the said proceedings is also not made known to them and without informing anything to the petitioners, behind their back, the shops were locked and the shutters were welded with the rolling. The Collector is not clear whether the said action which he had taken was under the Act or the Code and in view of this I am of the opinion that the Collector was duty bound to issue notice calling upon the petitioners to explain why should they not be evicted from the shops since the Taluka Development Officer has committed breach of the terms and conditions of the grant by which the land in question vested in the Taluka Panchayat.

16. At this stage it would be appropriate to refer to the decision of a Division Bench of this Court in the case of H.H. Parmar v. Collector, Rajkot and others, 1979 (2) GLR 97. In the said case the petitioner was appointed as Chief Officer of the Municipality by resolution which was passed by the Municipality. When the fact of appointment came to the notice of Collector, Rajkot, he in exercise of powers conferred on him by sec. 258 of the Gujarat Municipalities Act, 1963 stayed operation of the said resolution and issued a notice to the Municipality to show cause why its resolution should not be permanently stayed. The Municipality filed petition in the High Court in which order of Collector staying implementation of the said resolution was challenged. The petition was summarily dismissed. Letters Patent Appeal filed against the order was also dismissed. The Collector after hearing the Municipality confirmed his interim order and permanently stayed the implementation of the said resolution. Accordingly, the Municipality intimated to the petitioner that Collector had permanently stayed implementation of the resolution by which he was appointed as Chief Officer. It was that order which was challenged by the petitioner before the High Court. One of the arguments which was advanced by the petitioner of the said case was that he was not given an opportunity of being heard before the Collector and, therefore, the impugned order was liable to be set aside. The Division Bench considered the question whether in the context of sub-sec. (1) of Sec. 258, the petitioner was entitled to be heard before Collector had made the impugned order. It was argued on behalf of the Collector that third party who had received some benefits under the resolution, was not entitled to be heard before the benefit which had accrued to him was withdrawn by the Collector by making an order under Sec. 258 (1) of the

Act. After examining the scheme of Section 258 (1) of the Act, the Division Bench has held that if an order of appointment has been issued and appointee has taken charge of his office under the resolution, a right accrues to the appointee to hold that office and the question whether the right has lawfully accrued to him or unlawfully accrued to him cannot be decided against him unless he has been heard and, therefore, it was necessary for the Collector before taking an action under Section 258 of the Gujarat Municipalities Act to issue notice to the petitioner giving him a reasonable opportunity of being heard before the impugned order was made. In my view, the principles laid down by the Division Bench will apply with all force to the facts of the present case. It cannot be denied that the tenancy rights of the petitioners have been adversely affected by the impugned action and, therefore, the petitioners should have been given an opportunity to show cause before taking action by the Collector.

17. It is profitable to make a reference to the decision of a Division Bench of this Court in the case of Hasmukhbhai v. R. Parthasarthy, 12 GLR 128 wherein it was held that the power conferred upon the Municipal Commissioner under sec.258 of the Bombay Provincial Municipal Corporations Act is a quasi-judicial power and before cancelling a permission in exercise of the power conferred upon him under the said section the Municipal Commissioner should consider the question arising before him in a judicial spirit. In exercising the power, the Municipal Commissioner must act justly and fairly and not arbitrarily or capriciously; he must exercise the power in consonance with principles of natural justice. The minimum compliance with the principles of natural justice that is required of the Municipal Commissioner before taking action under the section is indicated in the said judgment. When an authority seeks to revoke or modify a right which has already been conferred, it is ordinarily presumed that the authority exercising the power must act in a judicial spirit. When an order is made under sec. 258, the Court should adopt a presumption that prior notice and opportunity to be heard should be given before taking action under the section. The jurisdiction of the Municipal Commissioner to cancel the building permission under sec. 258 of the Act arises only if the permission was granted in consequence of material misrepresentation or fraudulent statement. The relevant satisfaction is a judicial fact on the existence of which alone the power may be exercised. A superior authority, if any, or the High Court in a writ petition would, therefore, be entitled to consider whether there was due satisfaction

by the Municipal Commissioner on the materials placed before him and whether the order was or not made arbitrarily, capriciously or perversely. Even if the proceeding under sec. 258 of the Act is considered as an administrative proceeding, the duty to act in consonance of the principles of natural justice will yet to present because an authority exercising an administrative power is as much required to act justly and fairly and not arbitrarily and capriciously as an authority exercising quasi judicial or judicial power. Even if an order is administrative and not quasi judicial, the order has still to be made in a manner consonant with the rules of natural justice when it affects a person's right to property. The vice that attaches to an order passed in contravention of rules of natural justice cannot be cured ex post facto by affording to the person affected thereby an opportunity to represent his case after the order is passed. An order made in breach of the principles of natural justice is void and an opportunity given to the affected person to represent his case after such an order is made cannot have the effect of resuscitating a still-born order. The fatal defect in the proceeding may be cured only if the authority passing the order, realising that it had acted hastily and arbitrarily, annuls its decision, proceeds to reconsider the whole matter afresh after affording to the person affected a reasonable opportunity to represent his case and arrives at a fresh decision. The consideration whether miscarriage of justice has, in fact, resulted or not is wholly irrelevant in judging the validity of an order passed in violation of the rules of natural justice. The breach of natural justice is itself miscarriage of justice which entitles the applicant to succeed.

18. In the backdrop of the aforesaid settled principles enunciated by the above mentioned judgments, so far as the petitioners' case is concerned, it is neither the case nor it is pleaded by the respondents that the Collector before taking the impugned action had observed principles of natural justice. It becomes abundantly clear that the Collector had started the action in a high-handed manner by placing locks and welding the shutters with the rolling of the shops of which the petitioners are the occupiers without giving opportunity of hearing to them and, therefore, the principles of natural justice have been violated so far as the petitioners are concerned. The action of the Collector being illegal, devoid of any authority of law and contrary to the principles of natural justice is void abinitio and, therefore, is liable to be struck down and set aside.

19. It may be appreciated that in both the petitions at the time of admission rule has been issued and in both the petitions interim relief in terms of para 10 (D) and 12 (D) respectively was granted which was for removal of lock and welding of the shutters with the rolling of the shops of the petitioners and the said order was challenged in LPA No. 8 of 1988 in Special Civil Application No. 6205 of 1987. A Division Bench comprising of P.R. Gokulakrishnan, C.J. and R.J. Shah, J. (as they then were) while dismissing the LPA has observed that the petitioners are occupiers of the shops by virtue of the resolutions dated September 10, 1986 and December 10, 1986 passed by the Taluka Panchayat and subsequently the said resolutions have been cancelled by the District Development Officer and the Collector attempted to take action under Section 74 of the Bombay Land Revenue Code. The Division Bench did not find it proper to interfere with the interim relief granted by the learned Single Judge and hence refused to interfere with the said order passed by the learned Single Judge at the interlocutory stage. Therefore, the LPA was dismissed.

20. For the foregoing reasons, since the impugned action of the Collector is void abinitio and against the principles of natural justice, is liable to be struck down by quashing and setting aside the same. So far as the prayer for awarding the compensation for the alleged illegal act of the Collector in placing locks and welding the shutters with the rolling of the shops is concerned, it merits rejection. However, the petitioners are entitled to the other reliefs claimed by them in the petitions.

21. In the net result, both the petitions succeed so far as issuance of writ, order or direction quashing and setting aside the action of the Collector in placing the locks and welding the shutters with the rolling of the shops which were constructed by Porbandar Taluka Panchayat and which are in possession of the petitioners are concerned. Accordingly, both the petition are allowed to that extent. Prayer for compensation for the alleged act of the Collector is rejected. Rule is made absolute to the aforesaid extent in both the petitions with no order as to costs.

21.7.2000. (A.M. Kapadia, J.)

(karan)